

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DELTA WESTERN, INC.; XL
SPECIALTY INSURANCE COMPANY,

Plaintiffs,

v.

K-SEA TRANSPORTATION LLC,

Defendant.

IN ADMIRALTY

NO.

COMPLAINT

Plaintiffs Delta Western, Inc. and XL Specialty Insurance Company allege:

1. This is an action within the admiralty and maritime jurisdiction of this Court under 28 U.S.C. § 1333. The claims alleged in the action are admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. Plaintiff Delta Western, Inc., is a business entity organized and existing under the laws of the State of Washington. Delta Western is in the business, *inter alia*, of buying and selling bulk liquid petroleum products in the Alaska trade. Plaintiff XL Specialty Insurance Company ("XL") is a business entity organized and existing under the laws of the State of

1 Delaware. XL is in the business of underwriting insurance contracts. XL was the insurer of the
2 petroleum product cargos that are the subject of this action.

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4 3. Defendant K-Sea Transportation LLC ("K-Sea") is a business entity organized
5 and existing under the laws of the State of Delaware. K-Sea is doing business in the City of
6 Seattle. K-Sea is the successor-in-interest to Sea Coast Towing, Inc. ("Sea Coast"). K-Sea is
7 legally liable to plaintiffs for all of Sea Coast's acts and omissions as alleged herein.

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9 4. In or around June 2005 Delta Western and Sea Coast entered into a time charter
10 party ("Time Charter") whereby Delta Western obtained the cargo carrying capacity of Barge
11 SCT-340 for use in its petroleum product trading business in Alaska.

12 5. Pursuant to the Time Charter, Sea Coast undertook, *inter alia*, "...to exercise due
13 diligence to...maintain the Vessels in a seaworthy and clean condition, reasonably fit to transport
14 the cargos identified." Sea Coast further agreed that upon the cargos passing through the barge's
15 riser Sea Coast would "...be responsible for the distribution, stowage and transportation of the
16 bulk cargoes to the port/place of delivery."

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18 6. In September 2006, Barge SCT-340 loaded cargoes of unleaded gasoline, diesel
19 fuel, and jet fuel for delivery to various ports.

20 7. As a result of Sea Coast's negligence, the cargoes became contaminated and off-
21 specification.

22 8. As a result of Sea Coast's breach of the Time Charter, the cargoes became
23 contaminated and off-specification.
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1 9. As a result of Sea Coast's gross negligence, the cargoes became contaminated and
2 off-specification.

3 10. As a result of Sea Coast's intentional misconduct, the cargoes became
4 contaminated and off-specification.

5 11. As a result of these cargoes' contamination, Delta Western incurred losses related
6 to the depreciated values of the contaminated cargoes, transportation and temporary storage of
7 the contaminated cargoes, and other mitigation expenses. Delta Western sustained losses in the
8 total amount of \$1,870,219.23. XL paid Delta Western \$800,000 pursuant to the insurance
9 policy it issued to Delta Western covering the contaminated cargoes. XL is subrogated to Delta
10 Western's interest in this amount.

11 12. The Time Charter has a "prevailing party" attorneys' fees clause. Plaintiffs are
12 entitled to recover their reasonable attorneys' fees and costs incurred in bringing this action.

13 13. Plaintiffs are entitled to pre-judgment interest on their claims asserted herein.

14 WHEREFORE, plaintiffs pray:

15 a. That the Court enter judgment against K-Sea Transportation LLC and in favor of
16 plaintiffs in such amounts as may be proved at trial;

17 b. That the Court award plaintiffs their attorneys' fees and costs incurred in bringing
18 this action;

19 c. That the Court award plaintiffs pre-judgment interest; and
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1 d. That the Court grant plaintiffs such further relief as it deems just and proper.

2 DATED this 12th day of March, 2010.

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4 GASPICH & WILLIAMS PLLC

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6 s/Russell R. Williams

7 Russell R. Williams, WSBA No. 21203

8 Anthony J. Gaspich, WSBA No. 19300

9 Attorneys for Plaintiffs
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